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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,457

01/23/2004

Andrew Halliday

67634

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48940 7590 05/02/2007  
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EXAMINER

ALEXANDER, REGINALD

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

05/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/763,457

Applicant(s)

HALLIDAY ET AL.

Examiner

Reginald L. Alexander

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-25 and 30-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-25 and 30-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Double Patenting***

Claims 1-5, 8-25 and 30-41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/763,534 in view of Halliday '333 or EPO 638486. Both Halliday and the European reference teach the use of a lid having portions overlying a manifold chamber, storage chamber and discharge chamber.

This is a provisional obviousness-type double patenting rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33 and 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by EPO 638486.

There is disclosed in the European reference a cartridge 1, the cartridge defining a storage chamber 9 containing a beverage ingredient 8, a manifold chamber 6 surrounding, on three sides, the storage chamber, an inlet chamber 4 communicating with the manifold chamber, an opening through which ingredients can be filled in to the storage chamber, the opening being closed by a lid 3 having a first portion (outer periphery) overlying the manifold chamber and sealed to a wall of the inlet chamber (fig. 4) and a second portion (inner area) overlying the storage chamber, wherein the first

Art Unit: 1761

and second portions are pierceable to accommodate an inflow and outflow of liquid, a discharge chamber 37 which is overlain by a third portion of the lid, a discharge spout 5, a partition dividing the manifold and storage chambers the partition having apertures 7, and a filter material 10.

In regards to the piercing of the lid and piercing location, such is functional without a positive recitation of a means to pierce, and provides no structural limitations to the claims.

Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bentley et al.

There is disclosed in Bentley (figs. 1-3) a cartridge 1 containing one or more beverage ingredients and being formed from substantially air and water impermeable materials, the cartridge defining a storage chamber 4 containing the ingredients and a manifold chamber 7 extending completely around a periphery of the storage chamber, a discharge chamber 12, the cartridge comprising an opening through which the ingredients can be filled into the storage chamber, the opening being closed by a lid 3 having a first portion overlying the manifold, a second portion overlying the storage chamber and a third portion overlying the discharge chamber.

In regards to the piercing of the lid and piercing location, such is functional without a positive recitation of a means to pierce, and provides no structural limitations to the claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bentley et al.

In regards to the claimed number of openings and size thereof, such is considered an obvious matter of design choice to one skilled in the art. Since the number of openings and the opening size is a result effective variable one skilled in the art could experiment to find an optimum working number and size.

Claims 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPO 638486.

In regards to the claimed number of openings and size thereof, such is considered an obvious matter of design choice to one skilled in the art. Since the number of openings and the opening size is a result effective variable one skilled in the art could experiment to find an optimum working number and size.

***Allowable Subject Matter***

Claims 12-25, 30-32, 37, 40 and 41 are allowable over the prior art of record.

***Response to Arguments***

Applicant's arguments filed 19 March 2007 have been fully considered but they are not persuasive. Applicants use of the term "surrounded" or "surrounding" in claims

Art Unit: 1761


33 and 38 fail to define over the arrangement of the manifold about three sides of the periphery and around the discharge opening. A definition of "surround" includes encircling on all or nearly all sides. Applicant argues that Bentley fails to disclose an outflow of beverage from the storage chamber being separate from the manifold chamber. It should be noted that just because the outlet of Bently crosses beneath the manifold does not make it part of the manifold. The manifold and discharge outlet have separate functions and identities.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla  
17 April 2007

  
Reginald L. Alexander  
Primary Examiner  
Art Unit 1761